IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs May 13, 2008

HAROLD L. WOODROOF v. STATE OF TENNESSEE, RICKY BELL, WARDEN

Direct Appeal from the Criminal Court for Davidson County
No. 98-A-578 Cheryl Blackburn, Judge

No. M2007-02547-CCA-R3-HC - Filed August 19, 2008

The petitioner, Harold L. Woodroof, appeals the criminal court's order summarily dismissing his petition for writ of habeas corpus. Following our review of the record and applicable law, we affirm the court's order.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

J.C. McLIN, J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER and D. KELLY THOMAS, JR., JJ., joined.

Harold L. Woodroof, Pro Se, Nashville, Tennessee.

Robert E. Cooper, Jr., Attorney General and Reporter; Sophia S. Lee, Assistant Attorney General; Victor S. Johnson, III, District Attorney General; and Brett Gunn, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

On March 20, 1998, a Davidson County Grand Jury returned a seventeen count indictment against the petitioner, charging him with four counts of sexual battery (counts 1, 2, 12, 13), twelve counts of aggravated sexual battery (counts 3-11; 15, 16, 17) and one count of child rape (count 14). On June 11, 1998, pursuant to a plea agreement, the petitioner pled guilty with the manner of service of his sentences to be determined by the trial court. Accordingly, the petitioner pled guilty to two counts of sexual battery (counts 1, 12) and received two years for each count. He pled guilty to four counts of aggravated sexual battery (counts 3, 6, 9, 15) and received eight years for each count. Count 14 was dismissed with prejudice and the remaining counts were *nolle prossed*. Thereafter, a sentencing hearing was held wherein the trial court determined the manner in which the petitioner was to serve his sentences as follows:

Count 1: Two years, concurrent with Count 12; consecutive to Counts 3, 6, 9, 15.

Count 3: Eight years, consecutive to Counts 1, 6, 9, 12, 15.
Count 6: Eight years, concurrent with Count 9; consecutive to Counts 1, 3, 12, 15.
Count 9: Eight years, concurrent with Count 6; consecutive to Counts 1, 3, 12, 15.
Count 12: Two years, concurrent with Count 1; consecutive to Counts 3, 6, 9, 15.
Count 15: Eight years, consecutive to Counts 1, 3, 6, 9, 12.

As a result, the petitioner was ordered to serve a total effective sentence of twenty-six years in confinement.

On August 14, 2007, the petitioner filed a pro se petition for writ of habeas corpus, essentially arguing that (1) his sentences were illegal because the trial court was without authority and jurisdiction to impose consecutive sentencing without properly considering enhancement and mitigating factors; and (2) the court's imposition of consecutive sentencing violated his Sixth Amendment right to a jury trial as set forth in *Blakely v. Washington*, 542 U.S. 296 (2004) and its progeny,[1] which created a new rule of constitutional law made applicable to his case on collateral review. On October 22, 2007, the habeas corpus court dismissed the petition for failing to raise a cognizable claim for habeas corpus relief. The court found *inter alia* that the ruling of *Blakely* regarding enhancement of a sentence was not applicable to the petitioner's case because the petitioner entered guilty pleas based upon a negotiated plea agreement. The court further noted that *Blakely* was not applicable because the petitioner's convictions and sentences became final six years before *Blakely* was decided and *Blakely* and its progeny did not apply retroactively to collateral attacks for prior convictions and sentences. The petitioner appealed.

On appeal, the petitioner essentially reiterates his argument that he is entitled to habeas corpus relief because the imposition of consecutive sentencing by the trial court violated his Sixth Amendment right to a jury trial as set forth in *Blakely*.

Article I, section 15 of the Tennessee Constitution guarantees the right to seek habeas corpus relief and Tennessee Code Annotated sections 29-21-101 *et seq*. codify the applicable procedures for seeking a writ. However, the grounds upon which a writ of habeas corpus may be issued are very narrow. *Taylor v. State*, 995 S.W.2d 78, 83 (Tenn. 1999). A writ of habeas corpus is available only when it appears on the face of the judgment or the record of the proceedings upon which the judgment was rendered that a court was without jurisdiction to convict or sentence the defendant or that the defendant is still imprisoned despite the expiration of his sentence. *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993); *Potts v. State*, 833 S.W.2d 60, 62 (Tenn. 1992). The purpose of a habeas corpus petition is to contest void and not merely voidable judgments. *Archer*, 851 S.W.2d at 163. A void judgment is a facially invalid judgment, clearly showing that a court did not have

[1] The petitioner also refers to *Cunningham v. California,* 549 U.S. 270, 127 S. Ct. 856 (2007). *Blakely* held that any fact other than that of a prior conviction used to enhance a defendant's sentence must be proven to a jury beyond a reasonable doubt. 542 U.S. at 30. *Cunningham* applied the holding in *Blakely* and invalidated California's determinate sentencing law because it allowed a trial court to enhance a defendant's sentence based on facts found by the judge by a preponderance of the evidence. 549 U.S. at ----, 127 S. Ct. at 868.

statutory authority to render such judgment; whereas, a voidable judgment is facially valid, requiring proof beyond the face of the record or judgment to establish its invalidity. *See Taylor*, 995 S.W.2d at 83. The burden is on the petitioner to establish, by a preponderance of the evidence, "that the sentence is void or that the confinement is illegal." *Wyatt v. State*, 24 S.W.3d 319, 322 (Tenn. 2000). Moreover, it is permissible for a court to summarily dismiss a petition for habeas corpus relief, without the appointment of counsel and without an evidentiary hearing, if the petitioner does not state a cognizable claim. *See Hickman v. State*, 153 S.W.3d 16, 20 (Tenn. 2004).

We begin our review of the petitioner's argument by first noting that both this court and the Tennessee Supreme Court have addressed the applicability of *Blakely* to consecutive sentencing. This court has consistently adhered to the view that the imposition of consecutive sentencing does not offend a defendant's Sixth Amendment rights as set forth in *Blakely*. *See, e.g., State v. John Britt*, No. W2006-01210-CCA-R3-CD, 2007 WL 4355480, *13 (Tenn. Crim. App., at Jackson, Dec. 12, 2007), *perm. app. denied* (Apr. 28, 2008); *State v. Joseph Wayne Higgins*, No. E2006-01552-CCA-R3-CD, 2007 WL 2792938, at *14 (Tenn. Crim. App., at Knoxville, Sept. 27, 2007); *State v. Anthony Allen*, No. W2006-01080-CCA-R3-CD, 2007 WL 1836175, at *2-3 (Tenn. Crim. App., at Jackson, June 25, 2007), *perm. app. granted* (Tenn. Oct. 15, 2007); *State v. Eric Lumpkins*, No. W2005-02805-CCA-R3-CD, 2007 WL 1651881, at *12 (Tenn. Crim. App., at Jackson, June 7, 2007), *perm. app. granted* (Tenn. Oct. 15, 2007); *State v. Earice Roberts*, No. W2003-02668-CCA-R3-CD, 2004 WL 2715316, at *12 (Tenn. Crim. App., at Jackson, Nov. 23, 2004), *perm. app. denied* (Tenn. Mar. 21, 2005); *State v. Lawrence Warren Pierce*, No. M2003-01924-CCA-R3-CD, 2004 WL 2533794, at *13-14 (Tenn. Crim. App., at Nashville, Nov. 9, 2004), *perm. app. denied* (Tenn. Feb. 28, 2005). In addition, our supreme court has held that *Blakely* does not affect consecutive sentencing determinations. *See State v. Anthony Allen and Eric Lumpkin*, Nos. W2006-01080-SC-R11-CD, W2005-02805-SC-R11-CD, 2008 WL 2497001 (Tenn., at Jackson, June 24, 2008) (*Apprendi* and *Blakely* simply do not require the jury to determine the manner in which a defendant serves multiple sentences. That Tennessee's statutes require (in most instances) trial courts to make specific factual findings before imposing consecutive sentences does not extend the reach of *Apprendi* and *Blakel*y.).

More significantly, however, is the fact that the petitioner's case became final well before *Blakely* was decided. This court has consistently held that *Blakely* violations do not apply retroactively to cases on collateral appeal. *See, e.g., Billy Merle Meeks v. Ricky J. Bell, Warden*, No. M2005-00626-CCA-R3-HC, 2007 WL 4116486 (Tenn. Crim. App., at Nashville, Nov. 13, 2007), *perm. app. denied* (Tenn. April 7, 2008); *Timothy R. Bowles v. State*, No. M2006-01685-CCA-R3-HC, 2007 WL 1266594 (Tenn. Crim. App., at Nashville, May 1, 2007); *Ulysses Richardson v. State*, No. W2006-01856-CCA-R3-PC, 2007 WL 1515162 (Tenn. Crim. App. May 24, 2007), *perm. app. denied* (Tenn. Sept. 17, 2007) ("*Apprendi/Blakely* type issues regarding allocating fact-finding authority to judges during sentencing are not in the narrow class of procedural rules that apply retroactively."); *James R.W. Reynolds v. State*, No. M2004-02254-CCA-R3-HC, 2005 WL 736715 (Tenn. Crim. App., at Nashville, Mar. 31, 2005), *perm. app. denied* (Tenn. Oct. 10, 2005). Furthermore, the petitioner's claim that he was sentenced in violation of *Blakely* fails because, even if such a defect occurred, the defect would only render the judgment voidable, not

void. *See, e.g., Meeks*, 2007 WL 4116486; *Bowles*, 2007 WL 1266594; *Donovan Davis v. State*, No. M2007-00409-CCA-R3-HC, 2007 WL 2350093, (Tenn. Crim. App., at Nashville, Aug. 15, 2007), *perm. app. denied* (Tenn. Nov. 13, 2007). Finally, his general claim that the imposition of consecutive sentences was erroneous is not subject to habeas corpus relief because it requires proof beyond the face of the judgments to establish their invalidity, rendering them at most voidable, not void. *Tommy Dixon v. State*, No. W2005-02921-CCA-R3-HC, 2006 WL 1491419, at *2 (Tenn. Crim. App., at Jackson, May 31, 2006). To reiterate, a defect which renders a judgment merely voidable is not subject to collateral attack via habeas petition.

In sum, we note that nothing on the face of the petitioner's judgments indicate that the convicting court was without jurisdiction to sentence the petitioner or that the petitioner's sentences have expired. Accordingly, the petitioner failed to state a cognizable claim for habeas corpus relief, and the criminal court did not err in summarily dismissing his petition. The judgment of the criminal court is affirmed.

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J.C. McLIN, JUDGE